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In re Application of
Baxter et al.
Application No. 10/741,808
Filed: December 19, 2003
Attorney Docket No. 884.B82US1

**OFFICE OF PETITIONS
ON PETITION**

This is a decision on the petition labeled "PETITION UNDER § 1.182" filed June 4, 2004, which appears to be requesting, in effect, that the "Notice Of Omitted Item(s)" mailed June 4, 2004, be withdrawn to the extent that it states that Figure 3A is missing.

On April 1, 2004, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s)" stating that the application had been accorded a filing date of December 19, 2003, and advising applicants that Figure 3A described in the specification appeared to have been omitted.

In response, the present petition was filed. Petitioners explain that Figure 3A was not missing. Instead, the application included an unlabeled figure which is the Figure described in the specification.

It is obvious from the petition that no drawings were actually missing on December 19, 2003. However, the "Notice Of Omitted Item(s)" mailed KEYBOARD(), was correct in stating that Figure 3A described in the specification appeared to have been omitted. Therefore, the "Notice" was properly mailed and will not be withdrawn.¹

Accordingly, the petition must be **dismissed**.

Since the present petition was not necessitated by any error on the part of the Office, the \$130 petition fee will not be refunded.

¹ Attention is directed to MPEP 601.01(g) which reads in part:

The Office of Initial Patent Examination (OIPE) reviews application papers to determine whether all of the figures of the drawings that are mentioned in the specification are present in the application. If the application is filed without all the drawing figure(s) referred to in the specification, and the application [is entitled to a filing date], OIPE will mail a "Notice of Omitted Item(s)" indicating that the application papers . . . are lacking some of the figures of drawings described in the specification.

Each application received by OIPE must be individually reviewed for compliance with both the statutory requirements for according an application a filing date and for compliance with various requirements of the rules. Many of the applications concern complex technology. Accordingly, the employees of OIPE, who are not trained engineers or scientists, are not expected to make a detailed comparison of the written description and drawings. To do so would require a greater expenditure of time and resources, with a resulting increased cost, than are currently allocated. In the past, applicants and practitioners have indicated to the PTO that such increases are undesired. Therefore, if a Figure listed in the specification is not present, OIPE sends a Notice of Missing Parts and does not examine the content of the drawings and specification to determine whether the Figure may have been unlabeled or mislabeled.

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In the future, petitioner should make certain when reviewing the application prior to filing that all figures of drawings are correctly labeled and described in the brief description and elsewhere in the specification. If a Notice of Omitted Items is mailed because a drawing is unlabeled or mislabeled, petitioner may amend the specification to properly label the drawings and a petition is NOT necessary.²

A formal, preliminary amendment correcting the drawing should be filed.

The original application papers will include only those application papers present on the date of deposit.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of December 19, 2003, using the application papers filed on that date.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



Charles Steven Brantley
Petitions Attorney
Office of Petitions

² New, properly labeled drawings may be entered by an examiner without petition so long as the new drawings contain no new matter. See MPEP 608.02(a).

The Notice of Omitted Items gave petitioner three options:

- (1) File a petition (with fee) and evidence establishing the missing drawing(s) were application submitted to the PTO.
- (2) File a petition, petition fee, the drawings, and request a filing date as of the date that the petition and missing Figure(s) are submitted.
- (3) Accept the application as deposited.

Petitioner apparently has chosen option (3). When an applicant wishes to amend the specification (by relabeling figures or otherwise) then a formal amendment must be filed rather than a petition.